U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

December 14, 1998

Barbara E. Roberts, Esq.
City Attorney
P.O. Box 779
Galveston, Texas 77553-0779

Dear Ms. Roberts:

This refers to amendments to the city charter that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two at large with numbered posts, a change from a plurality to a majority vote requirement, redistricting criteria and revised recall procedures for the City of Galveston in Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our August 17, 1998, request for additional information on October 15, 1998.

The Attorney General does not interpose any objection to the specified recall procedures. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining specified changes, we cannot come to the same conclusion. We have carefully considered the information you provided, as well as Census data, and information in our files and from other interested parties. According to 1990 Census data, the city's total population is 28 percent black and 21 percent Hispanic. Under the existing system, six councilmembers are elected from single-member districts and the mayor is elected at large. Two of the single-member districts have black population majorities and have elected black representatives to the city council. This method of election and districting plan were adopted in settlement of a vote dilution

lawsuit filed by minority residents against the city in Arceneaux v. City of Galveston, No. G-90-221 (S.D. Tex.), and received preclearance under Section 5 for use on an interim basis on April 29, 1993, and for use on a permanent basis on January 27, 1994.

Prior to the adoption of a single-member district method of election, the city sought preclearance for a method of election similar to the plan currently under review. It provided for the election of four councilmembers from single-member districts, two councilmembers elected at large by numbered position and the mayor elected at large with a plurality vote requirement. This 4-2-1 method of election was proposed as a replacement for the at-large method of election that was the subject of the vote dilution lawsuit. On December 14, 1992, the Attorney General precleared the use of a plurality vote requirement, but interposed an objection under Section 5 to the proposed 4-2-1 method of election and to the use of numbered posts for the at-large seats because the city had not met its burden under Section 5 of demonstrating the absence of a discriminatory purpose and effect. Our conclusion in this regard was premised upon a number of factors.

First, our analysis of the at-large system indicated that voting in municipal elections was racially polarized and that minority-supported candidates had very limited success under the at-large system. Second, the districting plan that accompanied the 4-2-1 method of election did not include a single district in which black or Hispanic voters constituted a majority of the population; instead, the plan included two districts in which black and Hispanic voters combined constituted a majority. The city failed, however, to provide evidence of cohesion between black and Hispanic voters in municipal elections, rendering it doubtful that either minority group under this plan would elect a candidate of choice to a council seat. Third, the city maintained its preference for the 4-2-1 plan over the opposition of the minority community and the Arceneaux plaintiffs, who favored the adoption of a six single-member district plan with two districts in which black voters would constitute a majority of the population. Fourth, the city chose to maintain two at-large positions on the city council, in addition to the mayoral seat, and to add numbered posts. Given the existence of racially polarized voting in municipal elections, we concluded that these features of the proposed electoral system would limit the ability of minority voters to elect their candidates of choice to the city council. Finally, given all of the circumstances described above, we determined that the city had not provided legitimate, nonracial justifications for its choices regarding the 4-2-1 method of election and its adoption of numbered posts. It is against this backdrop that we must view the city's current

request for preclearance of the 4-2-1 plan, with numbered posts, as well as the proposed return to the use of a majority vote requirement.

In light of the Attorney General's prior objection to virtually identical voting changes, and the requirement of Section 5 that the submitting authority carries the burden of demonstrating that proposed voting changes are free of discriminatory purpose and effect -- see 28 C.F.R. 51.52(a) -- we have examined the information provided to determine whether new factual or legal circumstances exist which would lead to the conclusion that voting changes that did not satisfy the nondiscrimination requirement of Section 5 in 1992 will satisfy the same requirement under Section 5 today. Central to our consideration of this issue is the presence today in the City of Galveston of a method of election which fairly reflects minority voting strength, a circumstance which did not exist when the 1992 objection was interposed.

Our examination of city election returns since 1991 indicates that racial bloc voting continues to play a significant role in city elections. This year's mayoral election in which the Hispanic candidate was successful appears to have been an instance where Hispanic and black voters did vote together, along with a number of Anglo crossover voters. However, this cohesion between minority voters appears to have been a departure from the norm, as evidenced by the results in other recent elections. Of particular note is the fact that the proposed majority vote requirement, had it been in effect in this year's election, could well have changed the outcome of the mayoral race since the majority of the votes cast were for candidates favored by the Anglo voting majority. We find it significant that the city has provided no information or analysis in support of the proposed changes regarding racial bloc voting or cohesiveness between black and Hispanic voters, factors which were critical in our 1992 examination of the 4-2-1 method of election and which are no less important today.

While the city council has not yet adopted a redistricting plan for the proposed method of election, we understand that three alternative plans were developed by an appointed redistricting committee and they are currently before the council. We understand that all three plans are based on 1990 Census data and that this data continues to be the most accurate available information on the city's demographics. As was the case in 1992, we are informed that none of these plans provide for a single-member district in which Hispanic persons constitute a majority of the population or more than one district in which black persons constitute a majority. If this information is correct, it would appear to confirm that the proposed method of election, under current circumstances, cannot produce an electoral system that recognizes minority voting strength as

fairly as does the current system. Therefore, the proposed 4-2-1 method of election with numbered posts for the two at-large seats and a majority vote requirement would lead to a retrogression in minority voting strength prohibited by Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976)("the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"); 28 C.F.R. 51.54.

We have considered the impact of the proposed redistricting criteria on the city's ability in the future to draw districts that fairly recognize minority voting strength. Our analysis has been hampered by the lack of information from the city regarding these criteria and how they are to be interpreted and applied. For reasons that the city does not explain, these criteria place what appear to be significant restrictions on the ability of the city to draw racially fair redistricting plans. The criteria specify that city districts be drawn from north to south and that districts "be as equal as possible with only minor variations depending upon the streets selected for district boundaries." The latter criterion appears to be significantly more exacting than the plus or minus 10 percent deviation standard approved by the federal courts for local jurisdictions to satisfy the one person, one vote requirement of the Constitution. If we understand these criteria correctly, had they been in effect in 1993 they would not have permitted the existing districts to be drawn, and their future application could hamper the ability of the city to draw nonretrogressive redistricting plans in compliance with Section 5.

Although city officials and members of the charter review committee established in 1997 presumably were aware of the prior history of litigation under the Voting Rights Act and the Attorney General's 1992 objection, the information provided by the city in support of its application for preclearance of the instant changes contains remarkably little acknowledgment of these past events or their relevance to our review under Section 5 of the city's preclearance request. For example, the city council, which appointed the charter review committee, apparently provided little direction to the committee regarding factors that should be considered in proposing changes that would affect voting, such as whether its proposals complied with Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and satisfied the nonretrogression standard of Section 5. In response to a specific inquiry on this subject, you informed us simply that "the Charter Review Committee did not discuss in depth the Attorney General's 1992 objection." These facts, viewed in light of the position adopted by the council before the committee began

its work that it would put before the voters any proposed charter change approved by a majority of the committee, support an inference that the council gave very little independent consideration to the serious voting rights issues implicated by the charter committee's work and the potential impact of its efforts on the political participation opportunities of minority voters.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election to four single-member districts and two at-large seats, the adoption of numbered posts for the at-large seats, the adoption of a majority vote requirement for the election of city officers, and the proposed redistricting criteria.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Galveston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division